

**CHAPTER NO. 1005**

**HOUSE BILL NO. 2531**

**By Representative McMillan**

**Substituted for: Senate Bill No. 2533**

**By Senator Rochelle**

AN ACT to enact the "Community Mental Health Center Cooperation Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This part shall be known and may be cited as the "Community Mental Health Center Cooperation Act of 1998."

SECTION 2. It is the policy of this State to displace competition among community mental health centers with regulation to the extent set forth herein, in order to promote cooperation and coordination among community mental health centers in the provision of mental health services to citizens receiving such services pursuant to programs funded or administered by departments or agencies of state government, including, but not limited to, the TennCare program.

SECTION 3. As used in this part, unless the context otherwise requires:

(a) "Commissioner" means the Commissioner of Mental Health and Mental Retardation;

(b) "Cooperative agreement" means an agreement among two (2) or more community mental health centers for the offering, provision, operation, coordination, planning, funding, pricing, contracting, utilization review, or management of mental health and related services pursuant to programs funded or administered by departments or agencies of state government, including, but not limited to, the TennCare program, or the sharing, allocation, or referral of patients, personnel, instructional programs, support services, ancillary services, and facilities, or other services traditionally offered by community mental health centers for such programs;

(c) "Department" means the Department of Mental Health and Mental Retardation;

(d) "Community mental health center" means:

(1) A community mental health center as defined in Tennessee Code Annotated, Section 33-3-101(23); or

(2) Any parent or corporate affiliate of a community mental health center.

(e) "Intervenor" means any hospital, physician, allied health professional, healthcare provider or other person furnishing goods or services to, or in competition with, community mental health centers, insurer, hospital service corporation, medical service corporation, hospital and medical services corporation, preferred provider organization, health maintenance organization, behavioral health organization, or any employer or association that directly or indirectly provides health care benefits to its employees or members.

#### SECTION 4.

(a) A community mental health center may negotiate and enter into cooperative agreements with other community mental health centers in the State if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

(b) Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the Attorney General and Reporter and to the department at the same time.

(c) The department shall review the application in accordance with the standards set forth in subsection (e) and may hold a public hearing in accordance with the rules adopted by the department. The department shall give notice of the application to interested parties by publishing a notice in the Tennessee Administrative Register in accordance with Tennessee Code Annotated, Title 4, Chapter 5 compiled in Title 4, Chapter 5. Any intervenor may intervene in the proceeding and shall have standing under Tennessee Code Annotated, Title 4, Chapter 5. The department shall grant or deny the application within sixty (60) days of the date of filing of the application, and that decision must be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the Attorney General and Reporter, and any intervenor.

(d) If the cooperative agreement primarily relates to a program funded or administered by another department or agency of the state government, the department may refer the application to that other department or agency to conduct the review and render the decision required by this part.

(e) The department shall issue a certificate of public advantage for a cooperative agreement if it, or the other department or agency to which the department has referred the application pursuant to subsection (d), determines that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(f) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one (1) or more of the following benefits may result from the cooperative agreement:

(1) Enhancement of the quality of mental health and mental health-related care provided to Tennessee citizens, especially those receiving such services pursuant to programs funded or administered by departments or agencies of state government;

(2) Preservation of community mental health facilities in geographical proximity to the communities traditionally served by those facilities.

(3) Gains in the cost-efficiency of services provided by the community mental health centers involved;

(4) Improvements in the utilization of mental health resources and equipment;

(5) Avoidance of duplication of mental health resources; and

(6) Enhancement of the efficiency of the administration of programs of state government to provide mental health services to citizens of this State.

(g) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement shall include, but need not be limited to, the following factors:

(1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payers to negotiate optimal payment and service arrangements with community mental health centers, or other health care providers;

(2) The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, community mental health centers that is likely to result directly or indirectly from the cooperative agreement;

(3) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and

(4) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

(h) The department, or other department or agency to which the department has referred the application pursuant to subsection (d), shall consult with the Attorney General and Reporter regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement. The Attorney General and Reporter may consult with the United States Department of Justice or the Federal Trade Commission regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

(i) If the department, or the other department or agency to which the department has referred the application pursuant to subsection (d), determines that the likely benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department, or the other department or agency to which the department has referred the application pursuant to subsection (d), may initiate contested case proceedings to terminate the certificate of public advantage in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

(j) The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty (30) days after termination.

(k) The department, or the other department or agency to which the department has referred the application pursuant to subsection (d), shall review, on at least an annual basis, each certificate of public advantage it has granted pursuant to this part. The certificate shall be renewed if it is determined that the certificate continues to comply with the standards of subsection (e).

SECTION 5. Any applicant or intervenor aggrieved by a decision of the department, or the other department or agency of state government to which the department has referred the application pursuant to subsection (d) of the preceding section, in granting or denying an application, refusing to act on an application, or terminating a certificate, is entitled to judicial review of the decision in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

#### SECTION 6.

(a) Notwithstanding the provisions of Title 47, Chapter 25, or any other provision of law to the contrary, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding the provisions of Title 47, Chapter 25, or any other provision of law to the contrary, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this subsection immunizes any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

(b) If the department, or the other department or agency of state government to which the department has referred the application pursuant to Section 3(d) of this act determines that the likely benefits resulting from a cooperative agreement do not outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

(c) Any dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by principles of contract law.

SECTION 7. The department has the authority to establish reasonable application fees to cover the actual costs of administering the provisions of this part by regulations promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5. The department is authorized to promulgate necessary rules and regulations to implement the provisions of this part in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 8. Unless otherwise permitted by law, nothing in this part shall be deemed to grant any community mental health center or group of community mental health centers pursuant to a cooperative agreement, the authority to operate as a health maintenance organization, preferred provider organization, or insurer without obtaining an appropriate license from the Department of Commerce and Insurance.

SECTION 9. Nothing in this part shall be deemed to permit any referral to a provider-owned facility otherwise prohibited by state or federal law.

SECTION 10. For rulemaking purposes only, this act shall take effect on becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 1999.

**PASSED: April 29, 1998**

  
JIMMY RAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 18<sup>th</sup> day of May 1998**

  
DON SUNDQUIST, GOVERNOR